

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**PUBLIC INTEREST LEGAL  
FOUNDATION,**

Plaintiff,

v

Case No. 19-13638  
Hon. David M. Lawson  
Mag, Judge Michael J.  
Hluchaniuk

**JANICE M. WINFREY, in her official  
Capacity as Detroit City Clerk, and GEORGE  
AZZOUZ, in his official capacity as Director  
Of Elections for the City of Detroit,**

Defendants.

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**DEFENDANTS JANICE M. WINFREY AND GEORGE  
AZZOUZ'S MOTION FOR JUDGMENT ON THE PLEADINGS**

Defendants, Janice M. Winfrey, in her official capacity as Detroit City Clerk, and George Azzouz, in his official capacity as Detroit Director of Elections, request that this Honorable Court grant judgment on the pleadings, and dismiss Plaintiff's claims, pursuant to Fed. R. Civ. P. 12(c), because an examination of the pleadings, including the attachments to the City's Amended Answer and Affirmative Defenses to Plaintiffs' Second Amended Complaint and Affirmative Defenses (ECF No. 17 through 17-15), discloses that Plaintiff has failed to state claims on which relief can

be granted. The grounds for Defendants' motion are described in greater detail in the attached Brief in Support of Motion for Judgment on the Pleadings.

Defendants explained the basis for this motion and requested concurrence in the relief requested in this motion through a telephone call to Plaintiff's counsel, Kaylan Phillips, on February 28, 2020, but did not obtain such concurrence, making this motion necessary.

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Dated: February 28, 2020

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**DEFENDANTS JANICE M. WINFREY AND GEORGE AZZOUZ'S BRIEF  
IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS**

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## STATEMENT OF ISSUES PRESENTED

- I. Has Plaintiff shown that the City of Detroit has more registered voters than voting age citizens?

The City of Detroit answers “No.”

- II. Does Plaintiff’s (inaccurate) claim that there are 2,503 deceased persons on the City’s voter roll of nearly half a million voters plausibly show that the City’s voter list maintenance procedures are unreasonable?

Defendants answer “No.”

- III. Does Plaintiff’s (inaccurate) claim that there are 2,384 duplicate registrations on the City’s voter roll of nearly half a million voters plausibly show that the City’s voter list maintenance procedures are unreasonable?

Defendants answer “No.”

- IV. Do the City’s current voter list maintenance procedures already include reasonable procedures – daily review of local obituaries, monthly review of county death notices, comparison with social security death records (through the State of Michigan), and the flagging of registrants whose mail is returned as non-deliverable - designed to ensure the reasonable accuracy of its voter lists?

Defendants answer “Yes.”

- VII. Does the NVRA require the City to take every conceivable action to ensure that its voter rolls are completely accurate?

The City of Detroit answers “No.”



## STATEMENT OF MOST CONTROLLING AUTHORITY

In support of Defendants' position that Plaintiff has not shown that the City of Detroit has more registered voters than voting age citizens:

State of Michigan Qualified Voter File (QVF) data retrieved May 2019 and January 17, 2020; 2017 American Community Survey 1-Year Estimate, Citizens 18 years and over, Detroit, Michigan

In support of Defendants' position that Plaintiff's (inaccurate) claim that there are 2,503 deceased persons on the City's voter roll of nearly half a million voters does not plausibly show that the City's voter list maintenance procedures are unreasonable:

Fed. R. Civ. P. 12(c); *Jelovsek v. Bredesen*, 545F.3d 431, 434 (6th Cir. 2008); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).” *Fabian v. Fulmer Helmets, Inc.*, 628 F.3d 278, 280 (6th Cir. 2010); *CH Holding Co v Miller Parking Co*, 973 F. Supp. 2d 733, 736–37 (E.D. Mich. 2013).

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Fed. R. Civ. P. 12(c); *Jelovsek v. Bredesen*, 545F.3d 431, 434 (6th Cir. 2008); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).” *Fabian v. Fulmer Helmets, Inc.*, 628 F.3d 278, 280 (6th Cir. 2010); *CH Holding Co v Miller Parking Co*, 973 F. Supp. 2d 733, 736–37 (E.D. Mich. 2013).

In support of Defendants' position the City's current voter list maintenance procedures already include reasonable procedures – daily review of local obituaries, monthly review of county death notices, comparison with social

security death records (through the State of Michigan), and the flagging of registrants whose mail is returned as non-deliverable - designed to ensure the reasonable accuracy of its voter lists:

*Bellitto v Snipes*, 935 F.3d 1192 (11<sup>th</sup> Cir. 2019)

In support of Defendants' position that the NVRA does not require the City to take every conceivable action to ensure that its voter rolls are completely accurate:

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## INTRODUCTION

In this case, Plaintiff, Public Interest Legal Foundation (“PILF”), alleges that the City of Detroit’s elections officials, Janice M. Winfrey and George Azzouz, have violated the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. §§ 20501-20511, by failing to make a “reasonable” effort to maintain the accuracy of the City’s voter rolls. Plaintiff seeks declaratory and injunctive relief.

Plaintiff’s primary arguments are that the City’s voter list maintenance procedures are unreasonable because:

- The rate of registered voters on the City’s rolls is 106% of the City’s voting-age citizen population, which is per se implausible;
- The City’s voting roll contains 2,503 likely deceased registrants; and
- The City’s voting roll contains 2,384 likely duplicate entries.

Defendants request the Court to dismiss Plaintiff’s complaint pursuant to Fed. R. Civ. P. 12(c) because:

- Documents in the record conclusively show that the number of registered Detroit voters does *not* exceed the estimated number of voting age citizens in the City;
- Plaintiff’s list of alleged deceased voters is inaccurate, but even assuming that there were 2,503 deceased registrants on the City’s voting rolls, when compared to the nearly half a million registrants on the City’s voting rolls, this would comprise an error rate of only 0.4%, a miniscule figure.
- The State of Michigan, at the City’s request and pursuant to the City’s normal policies, eliminated 94% of the alleged duplicate entries before this suit was filed. However, even if there were still 2,384 duplicate entries on the City’s voting rolls, when compared to the approximately half a million

names on the City's voting rolls, this would comprise a similarly insignificant error rate.

- The City's current voter list maintenance procedures already include reasonable procedures – daily review of local obituaries, monthly review of county death notices, comparison with social security death records (through the State of Michigan), and the flagging of registrants whose mail is returned as non-deliverable - designed to ensure the reasonable accuracy of its voter lists.
- The NVRA does not require the City to take every conceivable action to ensure that its voter rolls are completely accurate.

## CONCISE STATEMENT OF MATERIAL FACTS

### I. The Parties.

Plaintiff, Public Interest Legal Foundation (“PILF”), is an Indianapolis, Indiana-based entity purporting to be “a non-partisan, nonprofit public interest organization [which] seeks to promote the integrity of elections nationwide through research, education, remedial programs and litigation.” (See Complaint, ECF No. 1, ¶3, PageID.2.) However, Defendants note that many third parties have characterized Plaintiff not as non-partisan, but as supporting politically-conservative causes. (See, e.g., *SourceWatch* article, ECF No. 17-2, Page ID 341-346, and *Media Bias/Fact Check* article regarding PILF, ECF No. 17-3, PageID.347 (“Overall, we rate PILF Right Biased based on story selection that almost always favors the right . . .”))

Defendant Janice M. Winfrey is the Detroit City Clerk. (ECF No. 1, ¶ 4, PageID.2.) Defendant Winfrey oversees and maintains Detroit’s voter registration records and is responsible for executing state and federal laws that require the removal of ineligible registrants, such as the NVRA. (ECF No. 1, ¶ 4, PageID.2.) According to the City Clerk’s website, “Among the City Clerk’s powers and duties are: . . . . 5. To give such notices of all registrations and elections and to perform duties prescribed in connection with such registration and elections.” City of Detroit, City Clerk, <https://detroitmi.gov/government/city-clerk>. (ECF No. 1, ¶ 4, PageID.2.)

Defendant George Azzouz is the Director of Elections for the City of Detroit. (ECF No. 1, ¶ 5, PageID.3.) “Under the direction of the City Clerk and in accordance with general policies of the Election Commission, the Director shall supervise, plan and monitor all activities and operations incidental to the conduct of elections and voter registration.” Det. City Code Sec. 3-104. (ECF No. 1, ¶ 5, PageID.3.)

## **II. The National Voting Registration Act (“NVRA”)**

Congress enacted the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. §§ 20501-20511 (formerly 42 U.S.C. §§ 1973gg-1973gg-10), often referred to as the “Motor Voter Act,” in 1993. “The NVRA was enacted primarily to increase the number of citizens eligible to vote in elections for federal office.”



*Dobrovolny v Nebraska*, 100 F. Supp. 2d 1012, 1030 (D. Neb. 2000). Toward this end, the NVRA bars voter removal programs unless they are uniform and non-discriminatory (52 U.S.C. §20507(b)(1)), prohibits the removal of registrants solely based on their failure to vote (52 U.S.C. §20507(b)(2)), requires that systematic removals of voters be completed at least 90 days prior to a federal election (52 U.S.C. §20507(c)(2)(A)), and contains strict limitations on the removal of voters because of a change of address (52 U.S.C. §20507(d)).

The NVRA places a number of voter registration responsibilities on states. It requires states to provide voter registration opportunities when applying for a driver's license or a state identification card (52 U.S.C. §20504), or when applying for public assistance or disability services (52 U.S.C. §20506). The NVRA also requires states to allow voters to register by mail. (52 U.S.C. §20505.)

On the other hand, Section 8 of the NVRA seeks to increase the accuracy of voter rolls by requiring states to make a “reasonable” effort to remove the names of ineligible voters (those who have died or moved) from their voter rolls. (See 52 U.S.C. §20507(a)(4).) The Act does not define what reasonable efforts would entail; even so, it cannot be reasonably argued that it requires elections officials to engage in extraordinary efforts to ensure that their voting rolls contain no errors whatsoever. (See 52 U.S.C. §§ 20501-20511.)

### III. The Illusory Voter Fraud Problem.

Although the voter list maintenance provisions in Section 8 of the NVRA were inserted as a compromise to those arguing that the possibility of voter fraud must be minimized (S. Rep. No. 103-6, at 18, 20-21 (1993)), and Plaintiffs and similar groups continue to argue that allegedly lax compliance with Section 8 raises the possibility of widespread voter fraud, voter fraud was not a significant problem when Congress enacted the NVRA in 1993 and is not a serious problem today.

In *Fish v Kobach*, 309 F.Supp.3d 1048, 1084 (D. Kan. 2018), Dr. Lorraine Minnite, author of a peer-reviewed book entitled *The Myth of Voter Fraud*, testified that “there is no empirical evidence to support Defendant’s claims in this case that noncitizen registration and voting in Kansas are largescale problems.” Dr. Minnite and another expert, Justin Levitt, Associate Professor for Clinical Law at New York University School of Law, also testified in *Democratic Nat Comm v Republican Nat Comm*, 671 F Supp 2d 575, 591–95 (D NJ, 2009), that “voter fraud in modern elections is very rare.” In *Ohio Republican Party v Brunner*, 544 F3d 711, 734–36 (6<sup>th</sup> Cir. 2008), vacated 555 US 5; 129 S Ct 5; 172 L Ed 2d 4 (2008), the court noted that:

ORP has failed to present evidence that any voters, including those who have registered in the last year, have committed actual voting fraud. Indeed, data collected by the Brennan Center, the same non-partisan organization that studied the failure rate of data matching,

indicates that actual voter fraud is extremely rare. Justin Levitt, *The Truth About Voter Fraud*, available at <http://www.brennancenter.org/content/resource/truthaboutvoterfraud/> (Nov. 09, 2007). The Brennan Center noted that “claims of voter fraud are frequently used to justify policies that do not solve the alleged wrongs, but that could well disenfranchise legitimate voters.” *Id.* at 3. In fact, this report noted that “[t]he most common source of superficial claims of voter fraud, and the most common source of error, probably involves matching voter rolls against each other or against some other source to find alleged double voters, dead voters, or otherwise ineligible voters.” *Id.* at 8. Similarly, the League of Women Voters of Ohio and the Coalition on Homelessness and Housing in Ohio studied the 9 million votes cast in Ohio between 2002 and 2004, and found only *four fraudulent ballots*. Let the People Vote, available at [http://www.cohhio.org/alerts/Election% 20Reform% 20 Report.pdf](http://www.cohhio.org/alerts/Election%20Reform%20Report.pdf) (Jun. 14, 2005).

Courts have made similar findings in other cases. For example, in *Veasey v. Abbott*, 830 F.3d 216, 238 (5<sup>th</sup> Cir. 2016), cert den 137 Sup. Ct. 612 (2017), in striking down a voter photo ID law as too restrictive, the Fifth Circuit found that there were “only two convictions for in-person voter impersonation fraud out of [twenty] million votes cast in the decade leading up to” the passage of the law. In *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 210 (4<sup>th</sup> Cir. 2016), the Fourth Circuit noted that the state had “failed to identify even a single individual who ha[d] ever been charged with committing in-person voter fraud in North Carolina.” Also see *One Wisconsin Inst, Inc v Thomsen*, 198 F Supp 3d 896, 912 (W.D. Wis. 2016), order enforced 351 F Supp 3d 1160 (W.D. Wis. 2019), noting that “there is utterly no evidence that [a single person voting under

multiple names] is a systematic problem, or even a common occurrence in Wisconsin or anywhere in the United States.”

Like their colleagues in other jurisdictions, the City’s elections officials are unaware of anyone who has voted fraudulently in any state, local or federal election held in the City of Detroit. (See ECF No. 17-12, ¶25, PageID.388.)

#### **IV. The State of Michigan’s Voting List Maintenance Procedures.**

Both the State of Michigan and the City of Detroit have responsibilities related to the City of Detroit’s voting rolls. Michigan election law designates the Secretary of State as Michigan's "chief election officer" with supervisory control over local election officials in the performance of their election related duties. (MCL 168.21). The Department of State's Bureau of Elections, located in Lansing, works under the direction of the Secretary of State and the Board of State Canvassers. (*Michigan Elections System Structure Overview*, Mich. Sec. of State, <https://www.michigan.gov/sos/0,4670,7-127-1633-27476--,00.html>.) The State Elections Director serves as the Director of the Elections Bureau. (MCL 168.32.) The Elections Bureau assists local elections officials with their administrative functions, and oversees the operation of Michigan’s Qualified Voter File system (“QVF.”) (*Michigan Elections System Structure Overview*, noted above.) The QVF is the statewide list of voters, which includes the City of Detroit’s voter roll. (See ECF No. 17-12, ¶¶ 5-6, PageID.383; MCL 168.509o-r.)

While both the City of Detroit and the State of Michigan may make changes to the City's voter roll, because the NVRA mandates a link between applications for state driver's licenses, public assistance and voter registration, many changes to the City's voter roll take place at state offices. For example, in the 11 months of 2019 preceding Plaintiff's filing of its complaint, 92% of Detroit voter applications submitted were done so at Michigan Secretary of State offices. (See ECF No. 17-12, ¶ 5, PageID 383.)

One important task performed by the State of Michigan is to regularly review death records from the Social Security Death Index ("SSDI"), compare these to the statewide QVF (which includes the City of Detroit's voter list), and remove deceased voters, where the records match those in the QVF. (See ECF No. 17-12, ¶ 6, PageID.383-384, and document attached to same at PageID.391; MCL 168.509o(4).) The State is also a member of the Electronic Registration Information Center ("ERIC"), a multi-state, data-sharing partnership which also uses the SSDI, among other reliable data sources, and a secure data matching tool, to aid in voter file maintenance. (See ECF No. 17-12, PageID.391.)

#### **V. The City's Voter List Maintenance Procedures.**

The City takes many actions to attempt to ensure the accuracy of its voter lists. For example, to discover and remove the names of registered voters who have died, the City reviews local obituaries, which are automatically sent to the

City via e-mail on a *daily* basis. (See Declaration of George Azzouz, ECF No. 17-12, ¶ 6, PageID.383, and document attached to same at PageID.389-390.)

The City also reviews all death certificates filed with the County of Wayne on a *monthly* basis. (See ECF No. 17-12, ¶ 6, PageID.383.)

As noted above, the Michigan Secretary of State regularly receives a data file of all deceased individuals from the federal Social Security Administration, known as the Social Security Death Index (“SSDI”) and cancels those records of deceased voters in the state Qualified Voter File (“QVF”), which includes the City of Detroit’s voter roll, and then notifies the City of such changes. (See Declaration of George Azzouz, ECF No. 17-12, ¶ 6, PageID.383-384, and document attached to same at PageID.391.)

In addition, when any City mailing to a registered voter is returned as undeliverable, the City sends another letter of inquiry to the voter. (See Declaration of George Azzouz, ECF No. 17-12, ¶7, PageID.384, and document attached to same at PageID.392-393.) If that letter is also returned, the City places the person in a “challenged” status, and if the person does not vote in the next two federal elections, the Michigan Secretary of State automatically cancels these records in the QVF and notifies the City electronically of the changes. (See Declaration of George Azzouz, ECF No. 17-12, ¶7, PageID.384.)

When the City discovers what appears to be a duplicate name on its voter list, the City sends the information to the state of Michigan, which reviews the information and compares the names against the State's drivers' license information, then makes any changes to the voter roll and informs the City of the change through the QVF. (See ECF No. 17-12, ¶8, PageID.384.)

## **VI. Plaintiff's Contacts with the City and Alleged NVRA Violations.**

### **A. The City's Alleged Implausible Voter Registration Rate.**

On or about May 23, 2019, Plaintiff sent a letter to Janice Winfrey, the Detroit City Clerk, which is attached to Plaintiff's Complaint as Exhibit A. (ECF No. 1-2, Page ID 25-30.) Plaintiff's May 23, 2019 letter alleged that the City of Detroit was "not making a reasonable effort to remove the names of deceased registrants, as required by the NVRA," and "not doing an adequate job checking for existing registrations and/or not cancelling previous registrations when found." (ECF No. 1-2, Page ID 25-30.)

In its May 23, 2019 letter, Plaintiff claimed that the City's rate of registered voters, as compared to the number of voting-age Detroit residents, was "implausible," because as of November 6, **2016**, the City had 511,786 registrants, and according to a **2016** U.S. Census Bureau population estimate, the City had only 479,267 voting-age residents. (ECF No. 1-2, Page ID 25-30.)

Plaintiff's statistics were inaccurate. As of *May 2019*, the City's voter roll, as confirmed through the QVF, contained approximately 477,000, not 511,786, registrants. (ECF No. 17-12, PageID.384.) Moreover, the *2017* Census data (the most recent available) estimated the Detroit citizen voting-age population to be 484,251, not 479,267 (see ECF No. 17-12, PageID.384, and attachment to same at PageID.394), which was greater than the most recent total of Detroit registered voters.

**B. Plaintiff's Request for Information.**

In its May 23, 2019 letter, Plaintiff also requested multiple categories of detailed information relating to the City of Detroit's voter registration roll dating back to 2014. (ECF No. 1-2, PageID.28-29.) Because the information Plaintiff demanded was onerous, the City requested assistance from the State of Michigan. The State of Michigan compiled the information and provided it to the City, and the City mailed this information to Plaintiff on a flash drive on or about July 10, 2019. (See Exhibit C to Plaintiff's Complaint, ECF No. 1-4, PageID.35.)

**C. Alleged Deceased Registrants on the City's Voter Roll.**

In its May 23, 2019 letter, Plaintiff claimed that the City's voter list contained what it characterized as a "significant number" of deceased persons, but Plaintiff did not identify these individuals or state how many allegedly deceased voters there were. (See ECF No. 1-2, PageID.26.)



Approximately 2 months after receiving the information the City had provided, Plaintiff sent the City a letter dated September 13, 2019, alleging that the City had 2,503 registrants on its voter roll (out of approximately half a million entries) whom Plaintiff alleged were deceased. (See Exhibit D to the present Complaint, ECF No. 1-5, PageID.39-45.)

Again, Plaintiff's allegations were inaccurate. In fact, the documentation provided to Plaintiff in July 2019 showed that at least 70 of those allegedly active voters Plaintiff claimed were deceased had *already been removed* from the voter rolls as deceased. (See Declaration of George Azzouz, ECF 1712, PageID.385, and document attached to same at PageID.396.)

Plaintiff's claim was also misleading, because at least 210 of the voters who Plaintiff claimed were deceased had actually been placed in a "challenged" status, which meant that the process had already begun to have them removed from the voter roll if they did not vote in the next two federal elections. (See Declaration of George Azzouz, ECF 17-12, ¶16, PageID.385, and document attached to same at PageID.397.) Both the City and the State of Michigan have continued to place others on the Detroit voter roll on a challenged status since that time. (See ECF 17-12, ¶16, PageID.385.)

Although Plaintiff claimed that its list of deceased individuals was based on information from the Social Security Death Index ("DDDI") or an obituary,

Plaintiff did not share any of its supporting documentation with the City, with the exception of the handful of instances noted in the letter. (See Declaration of George Azzouz, ECF 17-12, ¶17, PageID.385.)

The City forwarded Plaintiff's list of allegedly deceased voters to the State of Michigan, to compare with its records. The State discovered that in many cases, discrepancies between the information contained in the SSDI and in the QVF has made it difficult to confirm the deaths of the voters at issue. However, the City was advised that the State is continuing its investigation, and is cancelling voters as deceased as it deems appropriate. (See Declaration of George Azzouz, ECF 1712, PageID.386.)

#### **D. Alleged Duplicate Voter Registrations.**

In its May 23, 2019 letter, Plaintiff claimed that the City's voter list had "apparent duplicate and triplicate registrations for the same person," but did not identify these persons or state how many such registrations it had found. (See ECF No. 1-2, PageID.26-27.) However, in its September 13, 2019 letter, Plaintiff claimed that the City voter roll had 2,384 likely duplicate entries (again, out of a list of approximately half a million entries). (ECF No. 1-5, PageID.42-45.)

Following its receipt of this information, the City, consistent with its established practice, forwarded the list of alleged duplicate names to the State of Michigan. The State, after reviewing the list, removed 94% of the claimed

duplicate entries. (See Declaration of George Azzouz, ECF No. 17-12, PageID.386, and attachment to same at PageID.398-399.) These actions took place prior to Plaintiff's filing of the present lawsuit on December 10, 2019.

**E. The City's Alleged 196 Year-Old Registered Voter.**

In its letters to the City, Plaintiff claimed that the City's voter roll contained the name of woman named "Mamie Marie Jones," who was born on *October 26, 1823*, and therefore could not still be alive. (ECF 1-2, PageID.26; ECF No. 1-5, PageID.40.) However, the City's investigation showed that this voter had not registered to vote until 2008 (see ECF No 17-12, ¶ 21, PageID.386; ECF No. 17-10, PageID.371), and also found a previously-cancelled registration record for a "Mamie Marie Jones," with a birthdate of *October 26, 1983*. (See ECF No. 17-12, ¶ 21, PageID.386.) In other words, it appears that Ms. Jones was born *in 1983, not 1823*, but that when she registered to vote in 2008, whoever typed in her year of birth made a typographical error. Given that the City's voter roll contains nearly a half million voters, Defendants would not be surprised to find other data entry errors, made either by the State of Michigan or by the City. (See ECF No. 17-12, ¶ 21, PageID.386.)

**F. The City's Alleged Registered Voter Younger than 17 ½ Years Old.**

In its May 23, 2019 letter, Plaintiff has also claimed that it had discovered the name of an individual registered to vote before attaining the age of 17 ½. (ECF

1-2, PageID.26.) Plaintiff did not provide this name to the City. (ECF 17-12, ¶ 22, PageID.22.) However, the QVF system does not allow one to enter a birthdate for a newly-registered voter that is less than 17 ½ years old; the system will reject the filing in such case. (ECF 17-12, ¶ 22, PageID.22.)

## **VII. Actions Taken Prior to the Present Lawsuit.**

In its letters and Complaint, Plaintiff suggests that the City took no voter list maintenance actions prior to the commencement of this litigation. This is untrue. From January 2019 through November 2019, the City cancelled 785 registrations. (See ECF No. 17-13, PageID.409-420.) The City also sent out 617 confirmation letters to begin the process of removing voters from the voting roll. (Id.)

The State of Michigan took even more actions regarding the Detroit voter roll in this period. As shown in the EAC statistics taken from the QVF database, the State of Michigan cancelled 21,757 Detroit voter registrations from January to November 2019. (See ECF No. 17-13, PageID.410-420.) As noted earlier, the State also corrected 94% of the duplicate registrations alleged by Plaintiff. (See ECF No. 17-8, PageID.368-369.)

## **VIII. The Present Lawsuit.**

On December 10, 2019, Plaintiff filed the present lawsuit against Ms. Winfrey and Mr. Azzouz in their representative capacities only. (ECF No. 1, ¶ 6, PageID 3.) Plaintiff's Complaint contains a single count:

Count I: Violation of the NVRA: Failure to Conduct List Maintenance

In its Complaint, Plaintiff requests the entry of an order:

1. Declaring Defendants to be in violation of Section 8 of the NVRA;
2. Permanently enjoining Defendants from violating Section 8 of the NVRA;
3. Ordering the Defendants to develop and implement reasonable and effective registration list maintenance programs to cure failures to comply with Section 8 of the NVRA and ensure the NVRA are cured prior to the 2020 primary and general elections.

(ECF 1, PageID.20-21.)

**IX. Actions Taken Following the Filing of the Lawsuit.**

Since this lawsuit was filed, the City has continued its regular file maintenance procedures and continued to attempt to identify and remove erroneous registrations. (ECF 17-12, ¶ 23, PageID.387.) For example, on December 17, 2019, the City contacted the United States Post Office and inquired whether it had a database of deceased persons who formerly resided in the City of Detroit. (ECF 17-12, ¶ 23, PageID.387.) The Post Office responded on December 20, 2019 that it did not maintain such a list. (See ECF No. 17-12, ¶23, PageID.387, and letters attached to same at PageID.401-402.)

As noted above, the City receives and reviews copies of all recent death certificates issued by the County of Wayne on a monthly basis. (See ECF No. 17-12, ¶ 6, PageID.383.) Although the City denies that it was required by the NVRA,

after this suit was filed, the City asked Wayne County to review its records going back many years to determine if it had death certificates of any of the people shown on Plaintiff's list of claimed deceased voters. (See ECF No. 17-12, ¶23, PageID.387.) In January and February 2020, Wayne County provided the City with death certificates of 99 individuals (shown at ECF 17-12, PageID.403-407) contained on Plaintiff's original list of claimed deceased voters, which the City has removed from its voter roll, along with hundreds of others the City has removed from its voter roll in the normal course of its procedures. (See ECF 17-12, ¶23, PageID.387.) Wayne County is continuing to search for death certificates for other individuals shown on Plaintiff's list of claimed deceased voters, and will provide these, together with more recent death certificates, as time goes on. (See ECF 17-12, ¶23, PageID.387.) Upon receipt of both recent and older death certificates from Wayne County, and comparison with its records, the City will continue to remove deceased voters from its voter roll. (See ECF 17-12, ¶23, PageID.387.)

The City has also continued to follow up with the State of Michigan regarding the names of voters on the City's voter roll whom Plaintiff claims are deceased. (See ECF 17-12, ¶23, PageID.387.)

For the reasons set forth below, the Court should dismiss Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(c).

## ARGUMENT

### I. Standards Applicable to Motions for Judgment on the Pleadings.

Fed. R. Civ. P. 12(c) provides that “After the pleadings are closed - but early enough not to delay trial - a party may move for judgment on the pleadings.”

Motions for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) are governed by the same standard as motions to dismiss under Fed. R. Civ. P.

12(b)(6). *Jelovsek v. Bredesen*, 545F.3d 431, 434 (6th Cir. 2008). In other words, judgment under Rule 12(c) is appropriate when the pleadings establish that no material issue of fact remains to be decided and the movant is entitled to judgment as a matter of law. *Beal v. Missouri Pacific R.R.*, 312 U.S. 45 (1941).

Fed. R. Civ. P. 10(c) provides that any exhibit to a pleading is a part of the pleading for all purposes. See *Sensations, Inc. v City of Grand Rapids*, 526 F.3d 291 (6th Cir 2008); *Mitchell through Mitchell v Community Mental Health of Central Michigan*, 243 F.Supp.3d 822 (E.D. Mich 2017). Therefore, in resolving the present motion, the Court is to review Plaintiff’s Complaint (ECF No. 1), the City’s Amended Answer and Affirmative Defenses to Plaintiffs’ Complaint (ECF No. 17), and the exhibits to such pleadings (ECF No. 17-2 through 17-11). In addition, “a court may consider matters of public record in deciding a motion to dismiss without converting the motion to one for summary judgment.” *Northville*

*Downs v. Granholm*, 622 F.3d 579 (6th Cir. 2010) (citing *Commercial Money Ctr., Inc.*, 508 F.3d at 335–36).

“To survive a motion to dismiss, [a plaintiff] must plead ‘enough factual matter’ that, when taken as true, ‘state [s] a claim to relief that is plausible on its face.’ *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). Plausibility requires showing more than the ‘sheer possibility’ of relief but less than a ‘probab[le]’ entitlement to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). *Fabian v. Fulmer Helmets, Inc.*, 628 F.3d 278, 280 (6th Cir.2010); *CH Holding Co v Miller Parking Co*, 973 F.Supp. 2d 733, 736–37 (E.D. Mich. 2013).

As shown below, the Court must dismiss Plaintiff’s claims in this case, because Plaintiff has not plausibly shown that the City’s voter file maintenance procedures are unreasonable, or that injunctive relief would be appropriate.

**II. The most recent QVF records and Census estimates refute Plaintiff’s argument that the City has more registered voters than voting age citizens.**

In its Complaint, Plaintiff argues that the City’s voting roll contains more individuals than the number of City voting-age residents, and that this therefore proves that the City has not taken reasonable steps to ensure the accuracy of its voter roll. (ECF No. 1, ¶¶ 20, 22, PageID.8, 9.)



But this claim is flawed, for multiple reasons. First, Plaintiff relies on the number of registered voters immediately after the **2016** election, claiming this figure is 511,786. (ECF No. 1, ¶ 20, PageID.8.) In other words, Plaintiff's voter registration data is nearly 4 years out of date. The correct figure in July 2019, was much lower, approximately 477,000. (See Declaration of George Azzouz, ECF No. 17-12, PageID.384.) The number of voters on the City's list changes daily. (See ECF No. 17-12, ¶22, PageID.387.) On January 17, 2020, the QVF showed 478,820 voters (See ECF 17-4, PageID.348); on February 5, 2020, the figure was 479,689. (See ECF 17-2, ¶ 24, PageID.327.)

Second, Plaintiff asserts that Detroit's voting-age population is 479,267. Again, however, Plaintiff relies upon a U.S. Census estimate from 2016, which is 3 to 4 years out of date. The most recent Census data, from 2017, estimates Detroit's voting-age citizen population to be 484,251. (See Declaration of George Azzouz, ECF No. 17-12, Attachment 4, PageID.394.) Therefore, using the most recently-available figures from the QVF and the U.S. Census, the actual number of currently-registered citizens on the City's voting roll does not exceed the estimate of the City's voting-age citizen population.<sup>1</sup>

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<sup>1</sup> While the ratio of registered voters to voting-age citizen population using these figures would still be high, there are many reasons why a high ratio would be expected. Most importantly, the implementation of the "motor voter" provisions of the NVRA has increased the percentage of residents who are registered to vote by requiring that those applying for drivers' licenses and public assistance be given

But Plaintiff's analysis is flawed for other reasons as well. For example, the U.S. Census estimate of the City's population is likely lower than its actual population. As noted in "A Census Undercount Likely Cost Detroit \$1.3 Million for Childhood Lead Prevention," Talk Poverty (October 18, 2019), <https://talkpoverty.org/2019/10/18/census-undercount-detroit-lead/>, ECF No. 17-5, PageID.349-360, there is evidence that the previous full census, in 2010, undercounted the City's population by at least 36,223. This is because Detroit has many "hard-to-count" populations, such as renters, immigrants, low-income residents, black (80% of the population) and Latino residents, non-English speakers, disabled persons, homeless persons, people in non-traditional housing, and evicted residents. (See ECF No. 17-5, PageID.349-60.) Also see "Detroit's population expected to be hardest to count in 2020 census report," The Hill, December 12, 2019, <https://thehill.com/homenews/state-watch/474254-detroits->

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the opportunity to apply to vote. Unlike most other states, Michigan does not exclude residents who have been convicted of felonies or those deemed mentally disabled from voting (see MCL 168.509o(4) and (5)) which would tend to result in higher voter registration rates. Moreover, at least two recent changes in Michigan law have likely pushed the percentage of registered voters higher. First, as of September 2019, all those who apply for a driver's license or personal ID card are *automatically* registered to vote unless they are ineligible or specifically decline to register. See "Secretary Benson announces modernized voter registration on National Voter Registration Day," Michigan.gov, (September 24, 2019), ECF 17-14, Page ID 421-422. Second, Michigan residents can now register to vote completely on-line. (See "Michigan Online Voter Registration," ECF 17-15, Page ID 423.)

[population-expected-to-be-hardest-to-count-in-2020-census](#), ECF 17-6, PageID.361-362; and “Detroit tops list of hard-to-count cities ahead of 2020 census,” NBC News (December 12, 2019), <https://www.nbcnews.com/news/nbcblk/detroit-tops-list-hard-count-cities-ahead-2020-census-n1100561>, ECF No. 17-7, Page ID No. 364-367, which noted “Almost 86 percent of Detroit’s population lives in hard-to-count neighborhoods, by far the largest proportion of any major U.S. City.”

Commentators and courts have rejected similar arguments that a total of registered voters greater than the census estimate of residents of voting age automatically shows a failure to comply with the NVRA. For example, in “Does the U.S. Have Millions More Registered Voters than Eligible Adults?,” Snopes.com, <https://www.snopes.com/fact-check/us-more-registered-voters-than-adults>, ECF No. 17-11, PageID.372-379, the authors concluded that the methodology underlying this claim is problematic, for several reasons. For example, PILF typically includes all “inactive” voters. (ECF No. 17-11, PageID.376-377.) These individuals are eligible to vote, but may only do so by proving their residency at the polling location, which greatly lessens the likelihood of fraudulent voting. (ECF No. 17-11, PageID.376-377.)

PILF also relies on Census data, but the authors of *Snopes* article above state that “Population for Census purposes is not the same as eligible population for

voting purposes,” and quote Kristen Clarke, the president of The Lawyers Committee for Civil Rights Under Law, as concluding that “U.S. Census data is not a reliable measure of eligible voting population.” (ECF No. 17-11, PageID.377-378.)

PILF also deliberately relies on “book closing” registration rates, taken immediately before a federal election. These are typically very high because of new registrants in the run-up to the election, but are taken before elections officials are legally permitted to remove many registrants.<sup>2</sup> The authors of the Snopes article referred to above conclude that:

Using an unreliable and inaccurate assessment of voter registration rates, PILF wrongly asserts that the jurisdictions it has targeted have more voters on the rolls than eligible residents. It then falsely claims these high registration rates alone provide strong evidence that a jurisdiction is not fulfilling its obligation to maintain accurate voter rolls.

(ECF No. 17-11, PageID.378.)

In *Bellitto v Snipes*, 935 F.3d 1192 (11<sup>th</sup> Cir. 2019), the Court also rejected a similar voting registration ratio argument. In that case, the plaintiff alleged that the

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<sup>2</sup> Section 8 of the NVRA, at 52 U.S.C. §20507(c)(2)(A), requires states to complete, prior to 90 days before a primary or general election for federal office, any program intended to systematically remove the names of ineligible voters from the official list of eligible voters. Registration figures taken immediately *after* an election are similarly suspect, because although elections officials may have the legal power to remove registrants at such time, as a practical matter, it is unlikely that they will be able to do so immediately after an election.

Supervisor of Elections of Broward County, Florida had violated the NVRA, because the County's registration rates exceeded 100%, when comparing data drawn from the Election Administration and Voting Survey ("EAVS"), which compiles registration information that state jurisdictions provide to the U.S. Election Assistance Commission ("EAC") biennially, and the 5-year U.S. Census Bureau's American Community Survey ("ACS"). *Bellitto*, supra, at 1207. More specifically, the plaintiff claimed that the defendant's registration rate was 106% in 2010, and 103% in 2014. (See Complaint filed in *Bellitto v Snipes*, United States District Court for the Southern District of Florida, Case No. 0:16-cv-6174-BB, Document 1, ¶¶ 12, 11.<sup>3</sup>) The defendant, however, argued that the plaintiff used an artificially high numerator (the high point of registration at the "book-closing date" before a federal election) and an artificially low denominator (the five-year ACS estimate), resulting in an inflated registration rate. *Id.* at 1207-08.

The District Court agreed, finding that the plaintiff's calculations were misleading, and dismissed the plaintiff's claims, and the Eleventh Circuit upheld the dismissal, noting that "it was the prerogative of the district court to discount

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<sup>3</sup> This Court may take judicial notice of court filings in other cases in motions for judgment on the pleadings. See, e.g., *Lyons v Stoval*, 188 F.3d 327, 333 (6<sup>th</sup> Cir. 1999); *Green v Liberty Ins Corp*, unpublished opinion of the Court of Appeals, issued March, 30, 2016 (Docket No. 15-10434), 2016 WL 1259110, p \*2. For the Court's convenience, Defendants have attached a copy of the *Bellitto* complaint as Exhibit A in an Appendix to this brief.

[plaintiff's expert's] opinion when faced with competing expert testimony that undermined his calculus and thus his credibility.” *Bellitto*, supra, at 1208 -09.

The Court should do the same here.

**III. Plaintiff's (inaccurate) claim that there are 2,503 deceased persons on the City's voter roll does not plausibly show that the City's voter list maintenance procedures are unreasonable.**

As noted above, Plaintiff's claim that there are 2,503 deceased persons on its voter list is inaccurate. However, even if this were true at this time, when compared to the nearly half a million names on the voter roll, this would represent an error rate of only 0.4 percent. Defendants submit that this figure is statistically insignificant, and does not plausibly show that the City's voter list maintenance procedures are unreasonable.

**IV. Plaintiff's (inaccurate) claim that there are 2,384 duplicate registrations on the City's voter roll does not plausibly show that the City's voter list maintenance procedures are unreasonable.**

As shown above, Plaintiff claimed that there were 2,384 duplicate registrations on its voter list, but the State of Michigan has since corrected 94 % of these. But even if the State had not done so, Defendants submit that this error rate (0.4%) is insignificant, and would be insufficient to plausibly establish that the City's voter list maintenance procedures are unreasonable.

**V. The City's current voter list maintenance procedures already include reasonable procedures – daily review of local obituaries, monthly review of county death notices, comparison with social security death records (through the State of Michigan), and the flagging of**

**registrants whose mail is returned as non-deliverable - designed to ensure the reasonable accuracy of its voter lists.**

The City is not “sitting on its hands,” as Plaintiff suggests. It reviews local obituaries *daily* (See ECF No. 17-12, ¶6, PageID.383, 389-390), and Wayne County death certificates *monthly* (see ECF No. 17-12, ¶6, PageID.383). The State of Michigan regularly reviews Social Security Death Index records and makes appropriate changes in the City’s voter roll. (See ECF No. 17-12, ¶6, PageID.383-384, 391.) In addition, the City, consistent with 52 U.S.C. §20507(d)(2)(A), sends notices to those registrants whose mail is non-deliverable, and if those notices are also returned, places the voters on a “challenged” list. If these voters do not vote in two federal elections, they are removed from the list. (See ECF No. 17-12, PageID.384, and document attached to same at PageID.392-393.) While these systems are not perfect, Defendants submit that they constitute a “reasonable” effort to remove the names of ineligible voters.

**VI. The NVRA does not require the City to take every conceivable action to ensure that its voter rolls are completely accurate.**

In its initial letter to Defendants, Plaintiff asserted that Defendants are required to “us[e] *all available tools and technologies*” to address any inaccuracies in its voting rolls. (ECF No. 1-2, PageID.26.) In its complaint, Plaintiff asserts that after it spent several months of “considerable time and financial resources,” it was able to identify the alleged deceased voters and duplicate registrations listed in its

September 13, 2019 letter, and that all of Plaintiff’s efforts are replicable. (ECF No. 1, ¶¶ 57, 45.) However, the standard Plaintiff insists upon is not the standard required by applicable law. The NVRA does not require the City to take *every conceivable action* to ensure that its voter rolls are completely accurate – the City is only required to take *reasonable* actions. As the Eleventh Circuit held in *Bellitto v Snipes*, 935 F.3d 1192, 1205 (11<sup>th</sup> Cir. 2019):

While the statute requires a general program of list maintenance that makes a “reasonable effort” to remove voters who become ineligible because of change of residence or death, it does not define what a “reasonable effort” entails. . . we agree with the district court that a jurisdiction’s reliance on reliable death records, such as state health department records and the Social Security Death Index, to identify and remove deceased voters constitutes a reasonable effort. ***The state is not required to exhaust all available methods for identifying deceased voters***; it need only use reasonably reliable information to identify and remove such voters. (Emphasis added.)

In *Bellitto*, the defendant argued that its efforts to remove deceased registrants, which relied on information in the periodic Social Security Death Index (SSDI) were reasonable. At page 1207, the Eleventh Circuit rejected the plaintiff’s argument that the NVRA required the defendant to review all available sources, stating:

ACRU argues, nevertheless, that it was unreasonable for the County not to use additional available tools in order to identify deceased voters, such as the Social Security Cumulative Death Index -- which, unlike the periodic SSDI, contains a list of everyone who has passed away since the database was created -- and the State Territorial Exchange of Vital Events (“STEVE”) -- which, like the SSDI and SSDI Cumulative, is yet another database shared between states that



could have captured out-of-state deaths. It is plausible that if the County had also used the SSDI Cumulative or STEVE, it could have captured additional deceased voters. But *the NVRA only requires that Broward County make a reasonable effort, not an exhaustive one*, and the Florida Health Department's records and the SSDI are reliable sources of information concerning registrant deaths. Indeed, ACRU has failed to establish that these sources would not effectively capture most deceased voters. *The failure to use duplicative tools or to exhaust every conceivable mechanism does not make Snipes's effort unreasonable.*

*Bellitto v Snipes*, supra, at 1207 (emphasis added).

The same is true here. The City might be able to identify more deceased voters if it reviewed *all obituaries* from the *entire country*, not just those from the metropolitan Detroit area, and if it similarly reviewed *all death notices from outside of Wayne County*. But to impose these requirements would be unreasonable. The City might also be able to identify more deceased voters by purchasing the *cumulative* Social Security Death Index, which lists everyone in the nation who has died since social security records began being kept in the 1930s. But the court in *Bellitto* specifically rejected the notion that such extraordinary actions are required.

Plaintiff apparently believes that NVRA requires the City to drop everything and immediately begin a full-scale investigation of each of the allegedly deceased voters and duplicate registrations claimed by Plaintiff, even though Plaintiff never provided the City with its supporting documentation, and Plaintiff's claims were demonstrably inaccurate in many respects. Plaintiff's position is that whenever

any random individual or group appears at elections officials' offices with a list of alleged voting list discrepancies, the officials must trust such claims, disrupt their own operations and immediately purge their lists, or suffer litigation if they do not accede to such demands. The NVRA does not require this. Plaintiff also apparently believes that the City must also conduct continuous individualized investigations of all of those listed on its voter rolls to ensure that there are no errors. Discrepancies and errors are inevitable, given that the QVF changes daily (ECF No. 17-12, ¶24, PageID.387), and real people – who sometimes make mistakes, despite their best efforts – are required to input all these changes. The City's Elections Department does not have the staff or resources to eliminate all errors and discrepancies on its voter lists (see ECF No. 17-12, ¶24, PageID.387), which even Plaintiff characterizes as a "Herculean task." (ECF No. 1, ¶23, PageID.9.) The NVRA only requires the City to take reasonable actions to maintain the accuracy of its voter rolls, which it already does, not the extraordinary actions Plaintiff demands.

## CONCLUSION

For the reasons stated above, the Court should grant Defendants' Motion for Judgment on the Pleadings, dismiss Plaintiff's claims, and grant such additional relief as the Court deems appropriate.

Dated: February 28, 2020

/S/ Eric B. Gaabo  
Eric B. Gaabo (P39213)  
Attorney for Defendants

**CERTIFICATE OF SERVICE:**

**DEFENDANTS' MOTION FOR JUDGMENT ON  
THE PLEADINGS and BRIEF IN SUPPORT**

I state that on February 28, 2020, I served Defendants' Motion for Judgment on the Pleadings and Brief in Support on the other parties to this case by electronically filing these documents with the U.S. District Court for the Eastern District of Michigan, which will forward these documents to all parties of record through its electronic e-filing system.

Respectfully submitted,

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